

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
Ronald L. Motley, (1944-2013) Jodi Westbrook Flowers / Donald A. Migliori, <i>Co-Chairs</i> MOTLEY RICE LLC James P. Kreindler, <i>Co-Chair</i> KREINDLER & KREINDLER LLP	Elliot R. Feldman, <i>Co-Chair</i> Sean Carter, <i>Co-Chair</i> COZEN O'CONNOR
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VIA ECF

April 5, 2017

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

RE: *In Re: Terrorist Attacks on September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

The Plaintiffs' Executive Committees submit this letter in response to the Court's March 24, 2017 Order directing the Plaintiffs' Executive Committees to submit a "proposal for the most effective way for parties filing new complaints against the Kingdom of Saudi Arabia to join or adopt the Consolidated Amended Complaint ("CAC"), consonant with the Federal Rules of Civil Procedure and the Rules of Procedure of the United States Judicial Panel on Multi-District Litigation." ECF No. 3482.

In order to effectuate the adoption of the CAC by new plaintiffs who have already filed complaints against the Kingdom, as well as by plaintiffs who are expected to assert claims against the Kingdom in the near future, the Plaintiffs' Executive Committees propose two procedural devices: (1) a Notice to Conform the complaints in actions that have already been filed to the CAC; and (2) a Short Form Complaint that can be utilized to initiate suit against the Kingdom pursuant to the CAC, by plaintiffs who have not yet filed suit.

The Plaintiffs Executive Committees believe that the proposed Notice to Conform, a copy of which is attached hereto as Exhibit A, is the most efficient procedural device for plaintiffs who have already filed complaints against the Kingdom to adopt the CAC. In this regard, the plaintiffs in those cases have already identified themselves and described the injuries that form the basis of their claims against the Kingdom, as well as the nexus between those injuries and the September 11th attacks, in their underlying complaints. The Notice to Conform obviates the need for the plaintiffs in those cases to restate those plaintiff-specific details once

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again, a process that could be burdensome given the number of plaintiffs involved and the unique nature of each plaintiff's injuries, while at the same time enabling those plaintiffs to adopt the relevant factual allegations and pertinent causes of action from the CAC. The Notice to Conform further provides that any motion to dismiss filed in relation to the CAC will apply to cases in which the Notice to Conform has been filed, thus allowing for consolidated briefing in all such actions. This procedure has been used in other MDL proceedings, and is consistent with procedures recommended in the Manual on Complex Litigation (Fourth). *See* Manual For Complex Litigation (Fourth) § 40.52 (sample case management order allowing plaintiffs' steering committee to file "a master complaint containing allegations that would be suitable for adoption by reference in individual cases"); *see also id.* §§ 10.1, 11.3; Fed R. Civ. P. 42(a)(3) (authorizing court to "issue any other orders to avoid unnecessary cost or delay" in actions involving common questions of law or fact).

The Plaintiffs' Executive Committees also anticipate that additional plaintiffs who have not yet filed suit will be bringing claims against the Kingdom and/or Saudi High Commission for Relief of Bosnia & Herzegovina, and recommend that a Short Form Complaint be made available for such plaintiffs to initiate their actions in alignment with the CAC. A draft of the proposed Short Form Complaint is attached as Exhibit B hereto. As in the case of the Notice to Conform, the Short Form Complaint procedure has been used in other MDLs to streamline the filing of new claims in accordance with master pleadings.

The Plaintiffs' Executive Committees note that the Short Form Complaint is tailored to individual plaintiffs, as it is anticipated that individual victims, survivors, and family members will comprise the overwhelming majority of new plaintiffs. Claims by additional commercial plaintiffs are expected to be limited, and the Plaintiffs' Executive Committees believe any such new commercial plaintiffs can adopt the CAC through the Notice to Conform.

A proposed form of order endorsing the proposed Notice to Conform and Short Form Complaint procedures is enclosed for the Court's consideration as Exhibit C hereto.

The Plaintiffs' Executive Committees are available to discuss these proposed procedures at the Court's convenience.

Respectfully submitted,

MOTLEY RICE LLC

COZEN O'CONNOR

/s/ Jodi Westbrook Flowers

Jodi Westbrook Flowers, Co-Chair

Donald A. Migliori, Co-Chair

/s/ Sean P. Carter

Sean P. Carter, Co-Chair

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KREINDLER & KREINDLER

/s/ James P. Kreindler

James P. Kreindler, Co-Chair

SPC/:bdw

Enclosures

cc: The Honorable George B. Daniels (via ECF and Federal Express)
All MDL Counsel of Record (via ECF)

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